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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 RONALD HOLTZ,

11 Plaintiff,

12 v.

13 JANE DOE TERRY, et al.

14 Defendants.  
15

CASE NO. C12-5110 RBL-JRC

ORDER TO SHOW CAUSE

16 This action has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C.  
17 §§ 636 (b)(1)(A) and (B) and Local Magistrate Judge Rules MJR 1, MJR 3, and MJR 4. Plaintiff  
18 specified that this was an action for declaratory relief brought pursuant to 28 U.S.C. § 2201 when  
19 he filed the action (ECF No. 7). 22 U.S.C. §2201 does not allow for a cause of action in federal  
20 court. Thus, there is no field for the court clerk to file this case in the electronic system under 28  
21 U.S.C. §2201. Therefore, the clerk filed the case as a civil rights case pursuant to 42 U.S.C.  
22 §1983.  
23  
24

1 Plaintiff has objected and filed a “motion to clarify” in which he again specifically  
2 indicates that he wishes to bring the action as an action for declaratory relief under 28 U.S.C. §  
3 2201 (ECF No. 9). Plaintiff is in charge of his complaint. The Court will not consider the action  
4 as a civil rights action at this time.

5 This Court has no subject matter jurisdiction over declaratory judgment actions pursuant  
6 to 28 U.S.C. § 2201. The Declaratory Judgment Act, 28 U.S.C. 2201, does not itself confer  
7 federal subject matter jurisdiction on this court. Nationwide Mut. Ins. Co. v. Liberator, 408 F.3d  
8 1158 (9th Cir. 2005). Therefore, the Court cannot consider plaintiff’s claims as they are  
9 currently characterized.

10 The Court is required to liberally construe pleadings to allow for jurisdiction if it is  
11 available. Plaintiff alleges that he missed his medicine one time when he was out of the unit for a  
12 visit during medicine call (ECF No. 7). This action may best be described as raising an Eighth  
13 Amendment claim. As a pre trial detainee, the Eighth Amendment’s protections apply to him  
14 through the Fourteenth Amendment. Carnell v. Grimm, 74 F.3d 977 (9th Cir, 1996). But since  
15 plaintiff has stated that he objects to the case being characterized as a civil rights case, this Court  
16 is unable to determine what alternative ground, if any, would provide this Court subject matter  
17 jurisdiction over plaintiff’s complaint.

18 Therefore, the Court orders that the plaintiff show cause why this action should not be  
19 dismissed for lack of subject matter jurisdiction. Plaintiff may either respond, or file an amended  
20 complaint providing some alternative basis for subject matter jurisdiction. A response to this  
21 order is due on or before May, 18, 2012. Failure to respond or an inadequate response will result  
22 in a Report and Recommendation that this action be dismissed either for failure to state a claim  
23 or for lack of subject matter jurisdiction.

Given this turn of events, the Court will not consider the defendant's motion to dismiss, (ECF No. 14), until after plaintiff has had an opportunity to respond to this order. Defendants may re-note their motion to dismiss, if appropriate, after May, 18, 2012.

Dated this 13<sup>th</sup> day of April, 2012.

*J. R. Kord (matins)*

J. Richard Creatura  
United States Magistrate Judge